

Chapter 205

ZONING

[HISTORY: Adopted by the Special Town Meeting 1-22-1974 by Art. 5. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning Board of Appeals — See Ch. 65.
Building and land — See Ch. 81.
Earth removal — See Ch. 97.
Licenses and permits — See Ch. 131.
Subdivision of land — See Ch. 231.
0.5 POINT

ARTICLE I General Provisions

§ 205-1. Purpose.

For the purposes set forth in MGL c. 40A and all acts in amendment thereof and in addition thereto and under the authority thereof, the height, area, location and use of buildings and structures and the use of land throughout the Town of Westminster is hereby regulated as provided herein, and the Town is hereby divided into districts as hereinafter designated, defined and described and shown on an official copy of the Zoning Map, dated March 27, 1974, as amended, on file with the Town Clerk, which map is hereby made a part of this chapter.

§ 205-2. Stricter provisions to prevail.

In general, this chapter is supplementary to other Town bylaws affecting the use, height, area and location of buildings and use of premises, but where this chapter imposes a greater restriction in any respect than is imposed by other Town bylaws, the provisions of this chapter shall prevail.

§ 205-3. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

ARTICLE II Definitions

§ 205-4. Terms defined.

For the purposes of this chapter, the following words and phrases shall have the meanings or limitations of meanings herein defined. All present tenses shall include past and future tenses and all past tense the present. All singular terms shall include the plural and the

plural the singular.

ACCESSORY

- A. ACCESSORY BUILDING — A building devoted exclusively to a use accessory to the principal use of the lot on which it is located.
- B. ACCESSORY USE — A use incident and subordinate to and on the same lot as a principal use.

ADULT BOOKSTORE — An establishment having a substantial or significant portion of its stock-in-trade printed matter, books, magazines, picture periodicals, motion-picture films, video cassettes, or coin-operated motion-picture machines for sale, barter or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual conduct as that term is defined in MGL c. 272, § 31; or an establishment having for sale sexual devices, which shall mean any device primarily designed, promoted or marketed to physically stimulate or manipulate the human genitals, pubic area or anal area, or an establishment with a segment or section devoted to the sale or display of such materials. [Added ATM 5-6-2000 by Art. 30]

ADULT LIVE ENTERTAINMENT ESTABLISHMENTS (CABARET) — Establishments which feature live entertainment which consists of entertainers engaging in sexual conduct or nudity, or topless and/or bottomless wait persons or employees or any other form of nude or partially nude service or entertainment as defined in MGL c. 272, § 31. [Added ATM 5-6-2000 by Art. 30]

ADULT MINI-MOTION-PICTURE THEATER — An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by emphasis on matter depicting, describing or relating to sexual conduct as defined in MGL c. 272, § 31, for observation by patrons therein. [Added ATM 5-6-2000 by Art. 30]

ADULT MOTION-PICTURE THEATER — An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual conduct as defined in MGL c. 272, § 31, for observation by patrons therein. [Added ATM 5-6-2000 by Art. 30]

ADULT PARAPHERNALIA STORE — An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31. [Added ATM 5-6-2000 by Art. 30]

ADULT RETAIL USE — An establishment having 35% or more of its stock-in-trade devoted to books, magazines, publications, tapes, films and/or other items that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to sexual activities or anatomical genital areas. [Added ATM 5-6-2000 by Art. 30]

ADULT VIDEO STORE — An establishment having a substantial or significant portion of its stock-in-trade, videos, movies or other film, material which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL c.272, § 31. [Added ATM 5-6-2000 by Art. 30]

APARTMENT

- A. UNIT — Any room or suite of rooms forming a habitable unit for one family with its own cooking and food storage equipment and its own bathing and toilet facilities and its own living, sleeping and eating areas wholly within such room or suite of rooms.
- B. APARTMENT BUILDING — A building containing four or more apartment units, with no portion of the building below the first story or above the second story used for dwelling purposes.
- C. TOWNHOUSE APARTMENT — A group of attached one-family dwellings.

BUILD — Includes the words "erect," "construct," "alter," "enlarge," "move," "modify," "excavate," "fill" and any others of like significance.

BUILDING — Includes the word "structure," unless the context unequivocally indicates otherwise. "Building" shall also mean any three-dimensional enclosure by any building materials of any space for use or occupancy, temporary or permanent, and shall include foundations in the ground; also, all parts of any kind of structure above the ground, except fences and field or garden walls or embankment retaining walls.

DWELLING

- A. DWELLING, ATTACHED — A building designed for or occupied as a one-family residence and separated from another attached dwelling on one or both sides by a vertical party wall.
- B. DWELLING, DETACHED — A building designed for or occupied as a one-family residence and separated from any other building except accessory buildings by side yards.
- C. UNIT — Same as "apartment unit."
- D. ONE-FAMILY DWELLING — A building designed for or occupied by one family.
- E. TWO-FAMILY DWELLING — A freestanding building, designed or intended exclusively for residential use containing two dwelling units. (This can be two attached dwelling units.)
- F. EXISTING DWELLING — A dwelling existing at the time of adoption of this chapter.

FAMILY — Any number of individuals, including domestic employees, living together in a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more persons who are not within the second degree of kinship to each other, as defined by civil law, shall not be deemed to constitute a "family."

HEIGHT OF BUILDING — Measured as the vertical distance between the highest point of the roof and the mean finished grade of the ground adjoining the building.

HOME OCCUPATION — An activity customarily carried on by the permanent residents

of a dwelling unit, inside the dwelling unit, requiring only customary home equipment. "Home occupations" do not include barbershops, beauty shops, commercial offices such as real estate or insurance, nor do they involve the sale of articles produced outside the dwelling unit nor the raising or production of products involving odor, vibration, smoke, dust, heat or other objectionable effects.

HOTEL and MOTEL — A structure containing sleeping rooms with or without a common eating facility, each room having its own private toilet facilities and each room let for compensation.

LOT — The whole area of a single parcel of land undivided by a street under one ownership, with ascertainable boundaries established by deed or deeds of record or a segment of land ownership defined by lot boundary lines on a land division plan duly approved by the Planning Board under the Subdivision Control Statute.¹

LOT AREA — The area of a lot exclusive of any area in public or private way open to public use and resource area and buffer zone as defined and subject to protection under MGL c. 131, § 40, and 310 CMR 10.00 et seq. [Amended ATM 5-3-1997 by Art. 31; STM 10-12-1999 by Art. 13]

LOT COVERAGE — The amount of area on a lot covered by the horizontal cross section of structures.

LOT FRONTAGE — The distance measured along the boundary of a lot coinciding with the street line, being an unbroken distance along a way currently maintained by a town, county, or state, or along ways shown on the definitive plans of approved subdivisions which have been secured or constructed, through which actual access to the potential building site shall be required. [Amended ATM 5-3-2005 by Art. 41]

LOT LINE, FRONT — A line dividing a lot from a street. On any lot bounded on more than one side by a street, the street boundary that is to be the lot front shall be so designated in any application for a permit to build on such lot.

LOT LINE, REAR — Except for a triangular lot, the lot line opposite the front lot line.

LOT LINE, SIDE — Any lot line not a front or rear lot line.

LOT WIDTH — As measured wholly within such lot, the shortest distance between side lot lines at the required front yard depth.

MARINA — A commercial enterprise having an area for the storage, mooring or service of boats with frontage on a navigable body of water and with facilities for the landing of boats. If storage is to be on land and of a transient nature requiring frequent launchings and landings, it shall be inside a building.

MOBILE HOME and/or TRAILER

A. **MOBILE HOME** — A transportable, single-family dwelling unit built on a chassis for year-round occupancy and containing the same water supply, waste disposal and

1. Editor's Note: See MGL c. 41, § 81K et seq.

electrical conveniences as immobile housing.

B. TRAILER — The following shall be considered a trailer.

- (1) TRAVEL TRAILER — A vehicular portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation and having body width not exceeding eight feet and a body length not exceeding 32 feet.
- (2) PICK UP COACH — A structure to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
- (3) MOTOR HOME — A portable temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
- (4) CAMPING TRAILER — A folding structure mounted on wheels and designed for travel, recreation and vacation use.

MOBILE HOME OR TRAILER PARK — A parcel of land which has been planned and improved for the placement of mobile homes or trailers for transient or nontransient use and is designed to accommodate two or more mobile homes or trailers.

NONCONFORMING

- A. LOT — A lot that does not conform to a dimensional regulation prescribed by this chapter for the district in which it is located but was in existence at the time of adoption of this chapter and was lawful at the time it was established and conforms to the requirements of MGL c. 40A.
- B. USE — A use of a building or lot that does not conform to a use regularly permitted by this chapter for the district in which it is located, but was in existence at the time of the adoption of this chapter and was lawful at the time it was established.

OCCUPIED — Includes the words "designed, arranged or intended to be occupied."

PARKING SPACE — An area containing not less than 200 square feet to be used exclusively as a parking stall for one motor vehicle.

SELF-SERVICE STORAGE (MINI-WAREHOUSE) FACILITY — An establishment consisting of a structure or group of structures containing separate storage spaces of varying sizes leased or rented for dead storage as individual leases. Individual storage spaces shall be leased or rented to tenants who are to have access to said space for the purpose of storing or removing personal property. No individual storage space shall exceed 900 square feet of gross floor area. Trucking terminals are specifically excluded from this definition and the intent is to limit the definition to that use set forth in Massachusetts General Laws, Chapter 105A, Self-Storage Facilities. [Added ATM 5-6-2000 by Art. 31]

SIGNS — Includes any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag or representation used as or which is in the nature of an advertisement, announcement or direction or is designed to attract the eye by

intermittent or rapid motions or illumination.

SPACE, HABITABLE — Those areas within the exterior walls of a dwelling which have headroom of not less than seven feet measured vertically upward from the top of the finished floor, but excluding basement areas and excluding areas in any accessory structure attached to any dwelling.

STORY — That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half (1/2) of such portion vertically is below the average natural grade of the ground adjoining such building.

STREET — A public way or private way on record at the Registry of Deeds which affords a principal means of adequate access to abutting property and open to travel by the general public or a way shown on a subdivision plan duly approved by the Planning Board under the Subdivision Control Statute.²

STRUCTURE — A combination of material assembled at a fixed location to give support or shelter, such as a building, tower, framework, platform, bin, sign or the like.

USE — The purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

USE, PRINCIPAL — The main or primary purpose for which a structure or lot is designed, arranged or intended, or for which it is permitted to be used, occupied or maintained under this chapter. [Added ATM 5-3-2005 by Art. 42]

YARD

- A. **FRONT YARD** — An open space extending the entire width of a lot from lot side line to lot side line between the front lot line or lines and the nearest point of a building.
- B. **REAR YARD** — An open space extending the entire width of a lot line from side line to side line between the rear lot line or the corner of a triangular lot farthest from the front lot line and the nearest point of the building.
- C. **SIDE YARD** — An open space extending along a side line of a lot (between the front yard and the rear yard on such lot) and extending between the side line of such lot to the nearest point of the building.

ARTICLE III Zoning Districts

§ 205-5. Zoning districts designated.

The Town of Westminster is hereby divided into zoning districts designated as follows:

Residential Districts

R-I (50,000) [Amended STM 11-2-1978 by Art. 4]

2. Editor's Note: See MGL c. 41, § 81K et seq.

R-II (60,000) [Amended STM 10-12-1999 by Art. 14]

R-III (86,000)

Commercial Districts

C-I (Highway)

C-II (Neighborhood)

C-III (Downtown)

Industrial Districts

I-I

I-II [Added STM 10-10-1995 by Art. 17]

Floodplain and/or Wetland Protection Districts

F

§ 205-6. Zoning Map.

- A. Except for Floodplain Districts, the location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of the Town of Westminster," dated March 27, 1974, bearing the signatures of the members of the Planning Board and on file in the office of the Town Clerk, which map, with all explanatory matter thereon is declared to be a part of this chapter.³
- B. Any changes or amendments made at a Town meeting in accordance with the provisions of Article XIII of this chapter shall be indicated by the alteration of said map, and the map thus altered is declared to be a part of the bylaws; thus amended alterations shall be made to the map by the Planning Board and shall be signed and dated by said Board.

§ 205-7. Determination of district boundaries.

- A. Where a district boundary is indicated as within or parallel to a street, highway, railroad right-of-way, watercourse or Town municipal boundary such district boundary shall be construed as the center line or being parallel to the center line of such street, highway, railroad right-of-way, watercourse or Town municipal boundary. If a watercourse, the center line shall be defined as the center line of the natural channel.
- B. Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined from the scale of the map by the Building Inspector or enforcing officer of this chapter.

§ 205-8. (Reserved) ⁴

§ 205-9. Floodplain District. [Amended STM 12-13-1982 by Art. 2]

- A. Purpose. The purposes of the Floodplain District are to protect the public health,

3. Editor's Note: A copy of the Zoning Map is included at the end of this chapter.

4. Editor's Note: Former § 205-8, Wetland Protection District, added STM 12-13-1982 by Art. 2, was repealed ATM 5-2-2006 by Art. 51.

safety and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics and the flood storage capacity of the floodplain and to preserve and maintain the groundwater table and water recharge areas within the floodplain.

B. District delineation.

- (1) The general boundaries of the Floodplain District are shown on the Westminster Flood Insurance Rate Map (FIRM) dated July 19, 1982, as Zones A, A1-30 to indicate the one-hundred-year floodplain. The exact boundaries of the district are defined by the one-hundred-year-water-surface elevations shown on the FIRM and further defined by the flood profiles contained in the Flood Insurance Study dated January 1982. The floodway boundaries are delineated on the Westminster Flood Boundary Floodway Map (FBFH) dated July 19, 1982, and further defined by the floodway data tables contained in the Flood Insurance Study. These two maps, as well as the accompanying study, are incorporated herein by reference and are on file with the Town Clerk, the Planning Board and the Building Inspector.
- (2) Within Zone A, where the one-hundred-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Planning Board. If the data is sufficiently detailed and accurate, it shall be relied upon to require compliance with this chapter and the State Building Code.

C. Use regulations. The Floodplain District is established as an overlay district to all other districts. All development, including structural and nonstructural activities, whether permitted by right or by special permit, must be in compliance with MGL C. 131, § 40, and with the requirements of the Massachusetts State Building Code pertaining to construction in the floodplains (currently Section 744).

- (1) Permitted uses. The following uses of low flood-damage potential and causing no obstructions to flood flows shall be allowed, provided that they are permitted in the underlying district and they do not require structures, fill or storage of materials or equipment:
 - (a) Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
 - (b) Forestry and nursery uses.
 - (c) Outdoor recreational uses, including fishing, boating, play areas, etc.
 - (d) Conservation of water, plants wildlife.
 - (e) Wildlife management areas, foot, bicycle and/or horse paths.
 - (f) Temporary nonresidential structures used in connection with fishing, growing, harvesting storage or sale of crops raised on the premises.
 - (g) Buildings lawfully existing prior to the adoption of these provisions.

- D. Special permits. No structure or building shall be erected, constructed, substantially improved or otherwise created or moved; no earth or other materials dumped, filled, excavated or transferred, unless a special permit is granted by the Zoning Board of Appeals. Said Board may issue a special permit hereunder (subject to other applicable provisions of this chapter) if the application is compliant with the following provisions:
- (1) The proposed use shall comply in all respects with the provisions of the underlying district;
 - (2) Within 10 days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, the Planning Board, Board of Health, Town Coordinator and the Building Inspector. Final action shall not be taken until reports have been received from the above Boards or until 35 days have elapsed;
 - (3) All encroachments, including fill, new construction, substantial improvements to existing structures and other development are prohibited, unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood; and
 - (4) The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

ARTICLE IV

Application of Regulations, Modifications and Exceptions

§ 205-10. Conformity required.

No buildings shall be erected or used and no land shall be used or divided unless in conformity with the regulations of this chapter. All other buildings and all other uses of land or of buildings are hereby expressly prohibited, except those already lawfully existing which by the provisions of this chapter become lawfully nonconforming.

§ 205-11. Lots situated partially in Town.

When a lot is situated in part in the Town of Westminster and in part in the adjacent municipality, the provisions of this chapter shall be applied to the portion of such lot in the Town of Westminster in the same manner as if the entire lot were situated in Westminster.

§ 205-12. Lots in more than one district.

When a lot is transected by a zoning district boundary, the regulations of this chapter applicable to the larger part by area of such lot may also, at the option of the lot owner, be deemed to govern in the smaller part beyond such zoning district boundary, but only to an extent not more than 30 linear feet in depth beyond such zoning district boundary.

§ 205-13. Minimum building requirements; subdivision. [Amended STM 4-16-1983 by Art. 32]

- A. No building shall be erected, except on a lot fronting on a street, and there shall be not more than one principal building on any lot, except as allowed under this chapter. [Amended ATM 5-3-2005 by Art. 40]
- B. In addition, any parcel larger than five acres may be further divided without process through the Subdivision Control Law,⁵ provided that each created lot either conforms with the appropriate land space requirements for that zoning district or the following: [Amended STM 11-3-1994 by Art. 12]
 - (1) Each parcel shall have a minimum of 54 feet of frontage for an access to a Town road, this width to be maintained to the circumference of the radius described in Subsection B(4) below;
 - (2) Each parcel shall contain a minimum of two and one-half (2 1/2) times the land area it would normally require in each zoning district;
 - (3) There shall be no more than two such accesses adjacent to each other;
 - (4) There shall be a point on each lot from which a circle having a radius of 100 feet can be drawn without touching any of the opposing lot lines.

§ 205-14. Land within lines of a street.

Land within the lines of a street on which a lot abuts shall not be counted as part of such lot for the purpose of meeting the area requirements of this chapter, even though the fee to such land may be in the owners of abutting lots.

§ 205-15. Land taken by eminent domain.

Any land taken by eminent domain or conveyed for public purpose for which the land could have been taken or was taken by eminent domain shall not be deemed to be transferred in violation of the land area, width and space provisions of this chapter.

ARTICLE V Nonconforming Buildings and Uses

§ 205-16. Continuation, alteration or enlargement. [Amended STM 10-2-1978 by Art. 1]

- A. Any lawful use of any structure or land or both may be continued, although not conforming with the provisions of this chapter. A nonconforming business may be sold for a similar nonconforming purpose if not governed by the conditions of § 205-18.
- B. Existing nonconforming structures or uses may be extended or altered, provided that such extension or alteration conforms to the applicable land space and use requirements for that zoning district. No nonconforming extension or alteration is

⁵. Editor's Note: See MGL c. 41, § 81K et seq.

permitted unless there is a finding by the Zoning Board of Appeals that such a change, extension or alteration shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood. Such action by the Board of Appeals shall be in accordance with Article XII of this chapter and MGL C. 40A. [Amended STM 11-3-1994 by Art. 13]

- C. Nothing herein contained, however, shall prevent the alteration or enlargement of a sanitary disposal system which may be nonconforming, provided that such alteration or enlargement shall comply with all requirements of the State Department of Public Health or, if such system is not subject to state approval, with the requirements of the local Board of Health. No special permit or other action by the Board of Appeals shall be required in such event.

§ 205-17. Change to conforming use.

If any nonconforming use of any structure or land, or both, is changed to a conforming use, it shall not thereafter be put into any nonconforming use.

§ 205-18. Abandonment.

If any nonconforming development or use of land or of a building be discontinued for a period not less than 24 consecutive months, which, in the terms of this chapter, shall be evidence of abandonment of a nonconforming usage, such land or building shall thereafter be used or developed only in accordance with the terms of this chapter for the zoning district in which such property is located.

§ 205-19. Destruction or damage. [Amended STM 10-2-1978 by Art. 1]

Any nonconforming building or structure destroyed or damaged by fire, flood, lightning, wind or other natural cause may be restored only to the extent of its former nonconforming use and status, provided that, before a building permit shall be issued, plans of the restored building and the site shall be reviewed within 45 days of initial application for a building permit with the Planning Board, and failure to act by the Planning Board within 45 days of application shall constitute approval. Work of restoration must commence within two years from the date of such destruction or damage.

§ 205-20. Amendments during construction. [Added STM 10-2-1978 by Art. 1]

Construction or operation under a building permit or special permit shall conform to any subsequent amendment of this chapter, unless the use or construction is commenced within a period of six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to its completion, as continuously and expeditiously as is reasonable.

ARTICLE VI
Use Regulations

§ 205-21. Explanation of Table of Use Regulations.

- A. Except as provided by law or in this chapter in each district no building, structure, or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Use Regulations, § 205-22.
- B. A use listed in § 205-22 is permitted as of right in any district under which it is denoted by the letter "Y" subject to such requirements as may be specified elsewhere in this chapter. If designated in the Table by the letters "SP" the use may be permitted as a special exception only if the Board of Appeals so determines and grants a special permit therefore as provided in Article XII of this chapter and MGL C 40A subject to such restrictions as set forth elsewhere in this chapter and such further restrictions as said Board may establish. If designated by the letter "N" the use is not permitted. The designation of "SP" in the Table of Uses, § 205-22, in a given district does not constitute an authorization or an assurance that such use will be permitted. Rather, each special permit application shall be evaluated as to its probable effect on the adjacent property and the community welfare and may be approved or denied as the findings indicate appropriate. [Amended STM 10-2-1978 by Art. 1]

§ 205-22. Table of Use Regulations.

The Table of Use Regulations is included at the end of this chapter.

ARTICLE VII
Land Space Requirements

§ 205-23. Conformance required.

No building or structure shall be built nor shall any existing building or structure be enlarged or altered except in conformance with the regulations of this chapter as to lot coverage, lot area, land area per dwelling unit, lot width, front, side and rear yards and maximum height of structures in the several districts as set forth below, except as may otherwise be provided elsewhere in this chapter.

§ 205-24. Use of land for more than one requirement.

The land and yard spaces required for any new building or use shall not include any land or area required by any other building or use to fulfill zoning requirements.

§ 205-25. Distance between buildings.

If more than one building (other than a one-, two- or three-car garage, a toolshed, a greenhouse or a cabana) may lawfully be placed on any lot in a single or common ownership, the distance between the nearest parts of such buildings shall be not less than 20 feet.

§ 205-26. Land Space Requirements Table.

The Land Space Requirements Table is included at the end of this chapter.

ARTICLE VIII
Off-Street Parking

§ 205-27. Requirements to be met.

No land shall be used and no building or structure shall be erected, enlarged or used unless the off-street parking space requirements are provided as specified in this section. For the purpose of this section, an enlargement of any building shall require the provision of off-street parking for the existing building as if it were newly constructed if the floor area of any building existing upon adoption of this chapter is increased by more than 5%.

§ 205-28. Computation of required spaces.

Where the computation of required parking space results in a fractional number, only the fraction of one-half (1/2) or more shall be counted as one.

§ 205-29. Location of spaces.

Required off-street parking facilities shall be provided on the same lot as the principal use they are designed to serve.

§ 205-30. Size of spaces; paving.

- A. Each required car space shall be not less than 10 feet in width and 20 feet in length exclusive of drives and maneuvering space, and the total area of any parking facility for more than five cars shall average at least 320 square feet per car exclusive of access driveways.
- B. Where more than five spaces are required they shall be paved.

§ 205-31. Buildings containing multiple uses.

Where one building is used for more than one use, parking requirements shall be computed for each use (a motel with a restaurant would be required to provide parking for both rental units and for seating capacity of the restaurant; a professional office in a residence must provide the space for the office use in addition to the residential requirement).

§ 205-32. Number of required spaces.

- A. The minimum number of required parking spaces shall be as follows:

Principal Use	Minimum Number of Spaces
1- and 2-family dwellings	2 per dwelling unit
Apartments	2 per dwelling unit
Apartments built under housing for the elderly	1 per dwelling unit
Rooming houses and lodging houses	4, plus 1 for each rental unit over 2
Nursing homes	1 for each 2 beds

Principal Use	Minimum Number of Spaces
Motels, hotels and inns	2, plus 1 1/4 for each rental unit, plus 1 for each 20 square feet of floor area available for meetings or functions
Permitted offices in residences	3, plus 3 for each nonresident employee
Retail stores and services	In districts other than Commercial III Districts, 1 for each 150 square feet of gross floor area
Restaurants, theaters and other places of assembly exclusive of churches	In districts other than Commercial III Districts, 1 for each 4 seats
Bowling alleys	4 for each alley
Offices	In districts other than Commercial III Districts, 1 space for each 500 square feet of gross floor area
Warehouses and other commercial or industrial buildings	1 for each 900 square feet of gross floor area

- B. For accessory uses not listed above there shall be provided adequate off-street parking.

§ 205-33. Location of parking spaces.

No parking space shall be located within 20 feet of any property line in a C-I or I-I district. No parking in said districts shall be nearer than 50 feet of any property line abutting a residential district.

§ 205-34. Site plan review. [Amended ATM 5-3-2005 by Art. 44⁶]

- A. Purpose. The purpose of site plan approval is to promote public health, safety, and welfare by encouraging the laying out of parking, circulation, and buildings in a safe and convenient manner; to ensure that new developments are designed to protect and enhance the visual and environmental qualities of the Town, and to provide for an adequate review of development plans which may have significant impacts on traffic, drainage, Town services, environmental quality and community character.
- B. Applicability. Site plan approval shall be required for commercial, business, industrial, office, multiple dwelling residential structures, municipal, institutional, utility, fraternal or recreational purposes. No permit for construction, exterior alteration, relocation, occupancy, or change in use of any building shall be given and no existing use shall be extended unless site plan approval has been granted by the Planning Board. Site plan approval shall also be required for the resumption of

⁶. Editor's Note: This article also repealed former § 205-34, Certain parking lots subject to review, as amended STM 3-15-1989 by Art. 7.

any use discontinued for more than two years or for the expansion of any existing use. Expansion shall include any increase in floor space of 25% or more within a ten-year period.

C. Exemptions.

- (1) The following shall not require site plan approval:
 - (a) In all zones, normal maintenance or repair of any building or accessory structure.
 - (b) Customary home occupations.
 - (c) The construction or enlargement of any single-family dwelling or building accessory to such dwelling.
- (2) The Planning Board may vote to waive the applicant's need to submit an application for site plan review under these provisions if the Board determines the proposed changes to the site are minimal and do not require site plan review.

D. Procedures.

- (1) Applications shall be filed by the petitioner with the Planning Board at a regularly scheduled Planning Board meeting. Once the application is deemed complete, the Planning Board will mark the application received and notify the Town Clerk. Applications shall be filed with eight prints of the plans.
- (2) Upon receipt of the site plan application, the Planning Board shall transmit one copy each to the Inspector of Buildings, the Selectmen, the Police Chief, the Fire Chief, the Conservation Commission, the Director of Public Works and any other department the Planning Board deems appropriate. Such agencies shall, within 25 days of receiving such copy, report to the Planning Board about their concerns and questions. Agencies may recommend conditions or remedial measures to accommodate or to mitigate the expected impacts of the development. Failure of such agency to respond within 25 days shall be construed as nonopposition by that agency. The Planning Board shall not render a decision until it has received all board reports or said 25 days has elapsed.
- (3) Public meeting. The Planning Board will schedule the review of the site plan at a regularly scheduled Planning Board meeting within 35 days after receipt thereof. A decision regarding the site plan shall be rendered within 30 days after the close of the site plan review. The Planning Board shall notify the applicant, in writing, of its decision. The decision of the Planning Board shall be upon a majority vote of those present. The required time limits for a public meeting and for said action may be extended by written agreement between the applicant and the Planning Board.
- (4) Outside consultants. The Planning Board may hire outside consultants, at the expense of the applicant, to review the plan for conformance with the

requirements of the Board.

- E. Plans. Site plans shall be submitted according to the specifications set forth in the Site Plan Rules and Regulations of the Planning Board.
- F. Decision. Site plan approval shall be granted upon determination by the Planning Board that new buildings or other site alterations have been designed in the following manner, after considering the qualities of the specific location, the proposed land use, the proposed building form, grading, egress points, and other aspects of the development.
 - (1) The proposal shall comply with the purpose and intent of the Zoning Bylaw and with existing local and regional plans.
 - (2) The development shall be integrated into the existing terrain and surrounding landscape and shall be designed to protect abutting properties and community amenities. To the extent possible, building sites shall be designed to minimize the use of wetlands, steep slopes, floodplains, hilltops; minimize obstruction of scenic vistas from publicly accessible locations; preserve unique natural, scenic and historic features; minimize tree, soil and vegetation removal; and maximize open space retention.
 - (3) Architectural style shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in the roof and wall lines, and other architectural techniques. Proposed buildings shall relate harmoniously to each other.
 - (4) Adequate measures shall be proposed to prevent pollution of surface and ground water, to minimize erosion and sedimentation, to prevent changes in groundwater levels, to minimize potential for flooding, and to provide for stormwater drainage consistent with the functional equivalent of the Planning Board's Subdivision Rules and Regulations.⁷
 - (5) Roadways and circulation systems shall be designed to promote convenience and safety for both pedestrians and vehicles. Access roads by which the proposed development is reached shall be adequate in width, grade and construction to carry, without danger or congestion, the additional traffic that is generated from the development.
 - (6) Adequate buffers shall be provided to protect abutting properties from lighting, sight, sound, dust and vibration.
 - (7) Adequate facilities shall be provided for water supply and for handling and disposal of waste and other production by-products.
 - (8) Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment.

7. Editor's Note: See Ch. 231, Subdivision of Land.

- G. Conditions. The Planning Board may impose reasonable conditions to ensure such conformance, including such conditions, safeguards and limitations on time and use upon the applicant, developer and/or operator(s) of the site as the Planning Board may deem to be necessary to assure harmony with the intent of the Zoning Bylaw, including, but not limited to, the following:
- (1) Requirements that parking areas or other parts of the premises be screened from adjoining properties or from the street by walls, fences, planting or other devices.
 - (2) Modification of the location or of the exterior features of any and all structures on the site.
 - (3) Limitation on the hours of operation of outdoor lighting.
 - (4) Off-site traffic improvements to accommodate traffic generated by the proposed development.
- H. Regulations. The Planning Board may periodically adopt or amend rules and regulations for the implementation of this section by majority vote of the Planning Board.

ARTICLE IX Special Provisions

§ 205-35. Certain uses permitted.

The following uses may be permitted as designated in § 205-22, Table of Use Regulations, provided that they meet the following requirements in addition to any other requirements.

§ 205-36. Motels.

- A. No motel shall be constructed on a lot having less than 200 feet of frontage, nor less than 40,000 square feet of lot area.
- B. On each lot used for motel purposes there shall be provided front, rear and side yards each not less than 50 feet in depth.
- C. A space not less than 20 feet shall be maintained open with grass, bushes, flowers or trees all along each side lot, rear lot and front lot, except for entrance and exit driveways, and such open space shall not be built on, nor paved nor used for parking.
- D. No space within the required front yard depth shall be used for parking, except as a temporary nature such as for registering.
- E. Each motel site shall be provided with not more than two motor vehicle driveways for each abutting street which shall intersect the abutting street or streets at 90°.
- F. Each rental unit shall contain not less than 210 square feet of habitable floor area.

- G. Subject to the Board of Appeals, uses such as, but not limited to, restaurants, convention facilities, health clubs, retail shops and beauty and barber shops are permitted within motels containing 100 or more units.

§ 205-37. Apartments and attached dwellings.

A. Site plans.

- (1) In considering the granting of a special permit for the construction of apartments and attached dwellings, the Board of Appeals shall take into consideration the needs of the community, the effect of the development upon the neighborhood and the community in terms of traffic, utilities, drainage, municipal facilities and the health and welfare of the inhabitants. If after consideration the Board determines that the development is not in the best interest of the community for any of the aforementioned reasons, the application for said permit shall be denied. For each apartment development, a site plan shall be submitted, in duplicate, and shall comply with the following standards:
 - (a) R-I Zoning District:
 - [1] Minimum frontage: 400 feet.
 - [2] Minimum setback: 50 feet.
 - [3] Minimum side and rear yards: 50 feet.
 - [4] Minimum lot: five acres.
 - [5] Maximum building and parking coverage: 40%, exclusive of recreational buildings and facilities.
 - [6] Maximum building coverage: 20%, exclusive of recreational buildings and facilities.
 - (b) The following lot area (see definitions) shall be provided: [Amended ATM 5-2-2006 by Art. 48]
 - [1] For each unit containing one bedroom or less: 4,000 feet.
 - [2] For each two-bedroom unit: 8,000 feet.
 - [3] For each unit containing three or more bedrooms: 12,500 feet.
 - (c) No parking shall be allowed within 35 feet of any lot line, and parking areas shall be attractively landscaped.
 - (d) No building shall be located within 100 feet of any existing single- or two-family dwelling, and adequate landscaping in the form of trees shall be planted between the building and the single- or two-family dwelling.
- (2) One copy of said site plan shall be submitted by the Board of Appeals to the Planning Board for its review and comments. Where action by the Board of

Appeals differs from the recommendations of the Planning Board, the reasons for such action by the Board of Appeals shall be put in writing.

- B. Minimum habitable floor space. For each unit constructed or resulting from conversion, the minimum habitable floor space shall be as follows:
 - (1) Efficiency units: 450 square feet.
 - (2) One-bedroom units: 550 square feet.
 - (3) Two-bedrooms or more: 750 square feet.
 - (4) Westminster Housing Authority's housing for the elderly: 400 square feet.
- C. A minimum of 25% of the units constructed under this section shall be set aside as deed restricted affordable housing units or affordable rental units in perpetuity as defined by the Department of Housing and Community Development (DHCD). [Added ATM 5-2-2006 by Art. 48]

§ 205-37.1. Accessory dwelling unit. [Added ATM 5-3-2005 by Art. 48⁸]

An accessory dwelling unit in the Residential III Zoning District may be allowed by special permit in accordance with this section.

- A. Purpose. The purposes of the accessory dwelling unit section are to:
 - (1) Provide an opportunity for older homeowners who can no longer physically or financially maintain their single-family home to remain in the homes they might otherwise be forced to leave;
 - (2) Make housing units available to moderate income households who might otherwise have difficulty finding homes within the Town;
 - (3) Provide a variety of types of housing to meet the needs of its residents; and
 - (4) Protect stability, property values, and the single-family character of a neighborhood.
- B. Special permit procedures and conditions. The Zoning Board of Appeals shall be the special permit granting authority for the issuance of accessory dwelling unit permits. The Zoning Board of Appeals may authorize an accessory dwelling unit by special permit in any residential district, provided that the following standards and criteria are met:
 - (1) The accessory dwelling unit will be a complete, separate housekeeping unit that functions as a separate unit from the principal single-family unit.
 - (2) Only one accessory dwelling unit shall be created within a single-family structure.
 - (3) The lot in which the single-family unit is created must have a determination

8. Editor's Note: This article also redesignated former §§ 205-37.1 and 205-37.2 as §§ 205-37.2 and 205-37.3, respectively.

from the Board of Health that there is adequate septic capacity or that the system may be expanded to provide adequate capacity.

- (4) The accessory dwelling unit shall be designed so that the appearance of the building remains that of a one-family residence as much as feasibly possible. In general, any new entrances should be located on the side or rear of the building.
- (5) The accessory dwelling unit shall be clearly a subordinate part of the single-family dwelling. It shall be no greater than 700 square feet nor have more than two bedrooms.
- (6) At least three off-street parking spaces are available for use by the owner occupants and tenants.
- (7) The construction of the accessory dwelling unit shall be in conformity with the State Building Code.

C. Application procedures.

- (1) An application for an accessory dwelling unit special permit shall be filed with the Zoning Board of Appeals accompanied by three copies of the plan accompanied by a notarized letter from the owner(s) stating that he/they will occupy one of the dwelling units on the premises.
- (2) Upon receiving a special permit, the owner must file a declaration of covenants on the subject property at the Worcester County Registry of Deeds. The declaration shall state that the right to rent a temporary accessory dwelling unit ceases upon transfer of title. A time-stamped copy of the recorded declaration shall be provided to the Zoning Board of Appeals and the Inspector of Buildings.

D. Transfer of ownership of a dwelling with an accessory dwelling unit.

- (1) The special permit for an accessory dwelling unit in a single-family dwelling shall terminate upon the sale or transfer of title of the dwelling.
- (2) The new owner must apply for reapproval of a special permit for an accessory dwelling unit and shall submit a written request to the Zoning Board of Appeals, stating that conditions at the time of the original application remain unchanged. Minor changes may be approved without a hearing by the Zoning Board of Appeals. The Zoning Board of Appeals, in its sole discretion, at the reapplication of the new owner, may require compliance with all the procedures set forth herein.
- (3) Upon receiving a special permit, the new owner must file a declaration of covenants on the subject property at the Worcester County Registry of Deeds. The declaration shall state that the right to rent a temporary accessory dwelling unit ceases upon transfer of title. A time-stamped copy of the recorded declaration shall be provided to the Zoning Board of Appeals and the Inspector of Buildings.

- (4) A filing fee as determined by the most recent Zoning Board of Appeals Fee Schedule shall be included with the application. The applicant shall also be responsible for the cost of legal notices and mailings.

§ 205-37.2. Adult entertainment facilities and activities. [Added ATM 5-6-2000 by Art. 30]

A. Purpose.

- (1) The purpose of these adult entertainment regulations of the Town of Westminster Zoning Bylaw is to address and mitigate the secondary effects of adult entertainment establishments. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate, adverse impacts on the property values of residential and commercial property and adverse impacts on the quality of life. All of said secondary impacts are adverse to the health, safety and general welfare of the Town of Westminster and its inhabitants.
- (2) The provisions of these regulations have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of these regulations to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that is protected by the Constitutions of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of these regulations to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

B. For the purposes of this section, the term "adult entertainment facility" shall mean adult bookstores, adult live entertainment establishments, adult motion-picture theaters, adult mini-motion-picture theaters, adult video store, and adult paraphernalia store.

C. No special permit for an adult entertainment facility (as listed in the Table of Use Regulations⁹) shall be granted except in accordance with the following conditions and requirements:

- (1) Within a radius of 1,400 feet of any type of residential zoning district.
- (2) Within a radius of 1,400 feet of any school, library, or teaching facility, whether public or private, governmental or commercial, which school, library, or teaching facility is attended by persons under 18 years of age.
- (3) Within a radius of 1,400 feet of any church, synagogue, or permanently established place of religious services, which is attended by persons under 18 years of age, or day-care center.

⁹. Editor's Note: The Table of Use Regulations is included at the end of this chapter.

- (4) Within a radius of 2,000 feet of any other adult entertainment facility.
 - (5) Signs. Adult entertainment facilities shall be limited to one sign (freestanding or attached) with a total display area of no more than 10 square feet. The sign shall have no moving parts, shall be illuminated only by a direct, external lighting source, and shall be set back a minimum of 50 feet from all street or property lines.
 - (6) Structures associated with the proposed use shall be located a minimum of 150 feet from any street line.
- D. Application for a special permit submitted to the special permit granting authority (Westminster Planning Board) must include the following information:
- (1) Name and address of the legal owner of the adult entertainment facility.
 - (2) Name and address of all persons having a fee, equity and/or security interest in such facility. In the event a corporation, partnership, trust or other entity is listed, the name and address of every person who has an ownership interest and/or beneficial interest in the entity must be listed in order that the SPGA will know who are the persons who actually own and control the store or theater.
 - (3) Name and address of the manager.
 - (4) The number of employees, or proposed number of employees, as the case may be. Proposed security precautions, and the physical layout of the premises.
- E. Special permits for adult entertainment facilities shall not be granted to any person convicted of violating the provisions of Massachusetts General Laws Chapter 119, § 63, or Massachusetts General Laws Chapter 272, § 28. All persons listed on the application for a special permit as required in the previous subsection are subject to this prohibition. Special permits for adult entertainment facilities shall only be issued following public hearings held within 65 days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant. The special permit granting authority shall act within 90 days following the public hearing for which notice has been given by publication or posting as provided in Massachusetts General Laws Chapter 40A, § 11, and by mailing to all parties in interest. Failure by the special permit granting authority to take final action upon an application for a special permit herein within said 90 days following the date of the public hearing shall be deemed to be a grant of the permit applied for. Special permits issued by the special permit granting authority herein shall require an affirmative vote of four members of the five-member Board.
- F. A special permit granted herein shall lapse within one year, including such time to pursue or await the determination of an appeal referred to in Massachusetts General Laws Chapter 40A, § 17, from the grant thereof if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

- G. Any existing adult entertainment facility shall apply for such special permit within 90 days following the adoption of this section.
- H. If any of the provisions of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of the section, or the application of such other provisions which may be given effect without the invalid provision or application thereof.

§ 205-37.3. Self-service storage facilities. [Added ATM 5-6-2000 by Art. 31]

- A. Self-service storage facility buildings shall not exceed one story or 13 feet in height.
- B. Self-service storage facilities shall be limited to personal property use only.
- C. No outside storage shall be allowed.
- D. The storage of flammable liquids, highly combustible or explosive materials or hazardous chemicals shall be prohibited.
- E. The use of the unit for uses other than dead storage shall be prohibited.
- F. Servicing or repair of motor vehicles, boats, trailers, lawnmowers, or any similar equipment shall be prohibited.

§ 205-38. Exception for cluster developments. [Amended STM 10-2-1978 by Art. 5; 10-2-1978 STM by Art. 6; STM 11-1-2000 by Art. 7; ATM 5-3-2005 by Art. 45]

- A. For the purpose of encouraging the preservation of open space and promoting the more efficient use of land and to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town, an owner or owners of a tract of land containing 20 acres or more located in a residential district, or a duly authorized agent thereof, may, in connection with the submission of a subdivision plan for Planning Board approval under the Subdivision Control Law,¹⁰ concurrently submit a special permit request to the Planning Board excepting his plan from the lot area and frontage requirements of Article VII of this chapter.
- B. After notice and public hearing by the Planning Board and after due circulation of the report and recommendations of the Board of Health, the Conservation Commission, and the Zoning Board of Appeals, said report to be submitted to the Planning Board within 45 days of the date of plan filing, the Planning Board may grant such permit, provided that:
 - (1) It finds that the proposed plan will promote the purposes of this section; and
 - (2) It finds that the number of lots on the plan does not exceed the larger of:
 - (a) Ninety percent of the number derived from dividing the total land area of the tract which is usable for residential construction by the minimum

10. Editor's Note: See MGL c. 41, § 81K et seq.

lot size otherwise permitted in the zoning district or districts in which the tract lies; or

- (b) The number of lots upon which a dwelling could be constructed, without regard to this section, under the applicable laws and regulations of the Town and the commonwealth.
- (3) Every lot shall contain not less than 15,000 square feet, except that a lot abutting common open space may contain not less than 10,000 square feet.
- (4) Every lot shall have a minimum frontage of 50 feet on a way created by the concurrently approved subdivision plan. No lot approved hereunder shall front on an existing public or private way.
- (5) Provision shall be made so that open land shall be owned:
 - (a) In common by the owners of the lots in the tract; or
 - (b) By membership corporation, trust or association whose members are all the owners of the lots in the tract; or
 - (c) By the Town; or
 - (d) Otherwise as the Planning Board may approve.
- (6) Provision shall be made so that open land shall be:
 - (a) Restricted to any one or more of the following uses: recreational, agricultural, conservation or park.
 - (b) Open to such uses by at least the owners and occupants of the lots in the tract.
 - (c) Restricted so that no structure shall be erected thereon, except as an incident to the above uses.
- (7) Provision shall be made so that each dwelling shall be set back from the concurrently approved subdivision way on which its lot is located at least to a point on its lots where the lot width is a minimum of 100 feet but in no event less than 30 feet; and
- (8) Provisions shall be made so that each dwelling shall have two side yards, each at least 15 feet, and a rear yard of at least 20 feet.

C. Design standards:

- (1) All land not utilized for lots and roads shall be set aside as open space.
- (2) The open space shall be designed as large contiguous areas whenever possible. Long, thin, narrow strips or narrow areas of open space shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space.
- (3) Open space shall be arranged to protect valuable natural and cultural resources

such as stream valleys, wetlands and buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic vistas, trails and archeological sites.

- (4) The areas of the site to be developed shall be outside of the floodplain, steep slopes, wetlands and buffer zones.
 - (5) The development shall be designed to conform to the existing topography and natural features of the land, and minimize the total amount of disturbance to a site.
- D. The Planning Board may, in appropriate cases, impose further restrictions upon the tract, or parts thereof, as a condition to granting the special permit.
- E. In connection with an application for a special permit from the Planning Board under this section, the Applicant shall provide the following information:
- (1) A determination of the area of the tract usable for residential construction;
 - (2) A general description of the neighborhood in which the tract lies and the effect of the plan on the area;
 - (3) The relation of the plan to the long-range plan of the Town;
 - (4) The extent to which the plan is designed to take advantage of the natural terrain of the tract; and
 - (5) The applicant's opinion and reasons why the overall design and road layout of the cluster plan is superior to that of a conventional development plan.
- F. For the purposes of this section, the following definitions are adopted:

FRONTAGE — Distance measured in a continuous straight line between the intersection of the lot boundaries on the way.

LAND USABLE FOR RESIDENTIAL CONSTRUCTION — Land found by the Planning Board, assuming compliance with this chapter, to be suitable for the construction thereon of residential dwelling units under the rules and regulations of the Town thereto and shall not include any area subject to seasonal or periodic flooding nor any water body.

§ 205-39. (Reserved) ¹¹

§ 205-39.1. Developmental rate guidelines. [Added ATM 5-2-1998 by Art. 31]

- A. Single-family and two-family construction/conversion limitation.
- (1) The Building Commissioner shall issue building permits for the construction of one- and two-family dwellings or conversion to two-family dwelling units

¹¹ Editor's Note: Former § 205-39, Earth removal, added ATM 6-5-1993 by Art. 10, as amended ATM 5-3-1997 by Art. 32, was repealed STM 10-26-2004 by Art. 21.

or conversion on lots created after May 2, 1998, only as follows: No more than eight building permits may be issued in any one calendar year for contiguous lots owned by the same individual, including lots owned as tenants by the entirety, tenants in common, joint tenants and any trust, corporation or other entity in which the same individual has any beneficial interest, whether solely or with others. In the case of lots created from land which was contiguous and in the same ownership at any time prior to May 2, 1998, no more than eight building permits may be issued for such lots within any single calendar year.

- (2) No individual or entity having interests as defined above may be issued more than 10 building permits in any one calendar year.
- (3) A special permit may be granted by the Zoning Board of Appeals authorizing more rapid development than allowed under Subsection A(1) above for housing development determined by that Board to have unusually low impact on public services because of its location, occupancy or design and to serve important unmet housing needs of the Town of Westminster without overburdening Town services and the schools.
- (4) This section shall expire on July 1, 2010, unless sooner extended by vote of Town Meeting. [Added ATM 5-3-2005 by Art. 46]

B. Zoning change protection. The protection against subsequent zoning changes granted by MGL c. 40A, § 6.

§ 205-39.2. Wireless communications towers and facilities. ¹² [Added STM 6-18-2001 by Art. 3]

- A. Objectives. This section establishes the Wireless Communications Facilities Overlay District, permits the use of wireless communications facilities within the Town, regulates their impacts, and accommodates their locations and uses in a manner intended to:
- (1) Protect the scenic, historic, environmental and natural or man-made resources of the Town;
 - (2) Protect property values;
 - (3) Minimize any adverse impacts on the residents of the Town (such as, but not limited to, attractive nuisance, noise and falling objects) with regard to the general safety, welfare and quality of life in the community;
 - (4) Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of wireless communications facilities;

¹². Editor's Note: Former § 205-39.2, Wireless communications facilities moratorium, added STM 1-8-2001 by Art. 4, prohibited the construction of wireless communications facilities in the town and the issuance of building permits for such facilities, with certain exceptions, for a period of six months beginning 1-8-2001. Said moratorium has expired.

- (5) Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communications facilities;
- (6) Encourage the use of certain existing structures and towers;
- (7) Minimize the total number and height of towers located within the community;
- (8) Require tower sharing and clustering of wireless communications facilities where they reinforce the other objectives in this section; and
- (9) Comply with the Federal Telecommunications Act of 1996.

B. Applicability; terminology.

- (1) Applicability.
 - (a) The requirements of this section shall apply to all wireless communications facilities, except where federal or state law or regulations exempt certain users or uses from all or portions of the provisions of this section and is intended to repeal and supersede any section of the Zoning Bylaw which may conflict with the provisions of this section as they apply to wireless communications towers and facilities, as defined herein.
 - (b) No wireless communications facility shall be considered exempt from this section by sharing a tower or other structure with such exempt uses.
- (2) Terminology. In addition to the terms defined in § 205-4, Definitions, of this chapter, the following words, which are technical terms applying to wireless communications facilities, shall have the meanings indicated below. Although set forth here for convenience, the terms shall have the same effect as if set forth in § 205-4, Definitions.

ABANDONED TOWER — A tower not being used for the purpose for which it was permitted for a period of 12 months. Failure to file the annual declaration with the Westminster Board of Selectmen shall constitute an abandonment of the tower.

ACT — The Federal Telecommunications Act of 1996.

ADEQUATE COVERAGE — Coverage is adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be signal strength of at least 90 DBMs. It is acceptable for there to be minor temporary loss of signal within the area of adequate coverage. The outer boundary of the area of adequate coverage is that location past which the signal does not regain uniformly.

ANTENNA — A device by which electromagnetic waves are sent or received, whether a

dish, rod, mast, pole, set of wires, plate, panel, line, cable or other arrangement serving such purpose.

ANTENNA SUPPORT STRUCTURE — Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

AVAILABLE SPACE — The space on a tower or other structure to which antennas of a wireless communications service provider are able to fit structurally and be able to provide adequate coverage.

BASE STATION — The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider may be located on a single tower or structure.

BUILDING FOR EQUIPMENT SHELTER — An enclosed structure used to contain batteries, electrical equipment, telephone lines, transmitters, etc. used by the carriers on the towers.

BUILDING-MOUNTED ANTENNA SUPPORT STRUCTURE — Any antenna support structure mounted on, erected on, or supported in whole or part by a building or structure occupied and/or used for purposes other than wireless telecommunications.

CAMOUFLAGED — A wireless service facility that is placed within an existing or proposed structure disguised, painted, colored, or hidden by a compatible part of an existing or proposed structure, or made to resemble an architectural feature of the building or structure on which it is placed. The term "stealth" is sometimes used as a synonym for "camouflaged."

CARRIER — A company, authorized by the FCC, that provides wireless communications services.

CHANNEL — One of the assigned bands of radio frequencies as defined in the Act, licensed to the service provider for wireless service use.

COLLOCATION — The use of a single mount by more than one carrier and/or several mounts on a building or structure by more than one carrier. Each service on a collocation is a separate wireless service facility.

COMMUNICATIONS EQUIPMENT SHELTER — A structure designed principally to enclose equipment used in connection with wireless communications transmission, and/or reception.

COMMUNICATIONS TOWER — A monopole or self-supporting tower, constructed as a freestanding structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving wireless communications.

CONCEALED — A wireless service facility within a building or other structure, which is not visible from outside the structure.

CONSULTANT — A qualified engineer licensed in the Commonwealth of

Massachusetts, selected by the ZBA or DAC at the expense of the applicant to review the application and verify that the new tower is necessary at the proposed site, or any other review required under this section or requested by the ZBA or DAC, as the case may be.

DAC — Design Advisory Committee.

DBM — A unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to one milliwatt.

dBu — Unit of measure of the electric field strength of a signal, expressed in an absolute measure for describing service areas and comparing different transmitting facilities independent of the many variables (See "DBM" above.) introduced by different receiver configurations.

DESIGN ADVISORY COMMITTEE — The Westminster Planning Board.

EA — See "Environmental Assessment."

EMERGENCY POWER — Electrical generators usually powered by propane gas or diesel fuel so as to provide uninterrupted service in the case of electrical utility failure, provided that any generators used may not emit more than 35 decibels over the ambient noise level at the property line.

ENVIRONMENTAL ASSESSMENT — An EA is the document required by the FCC and NEPA when a personal wireless facility is placed in certain designated areas.

FAA — Federal Aviation Administration.

FACILITY SITE — A conforming lot or parcel, or any part thereof, which is owned or leased by one or more wireless communications providers and upon which one or more wireless communications facility(s) and required landscaping are located.

FALL ZONE — The area on the ground within a prescribed radius from the base of a tower, typically the area within which there is a potential hazard from falling debris, or collapsing material.

FCC — Federal Communications Commission.

FREQUENCY — The number of cycles completed each second by an electromagnetic wave, measured in hertz (Hz), megahertz (MHz, one million hertz), or gigahertz (GHz, one billion hertz).

HERTZ — One hertz (Hz) is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

LATTICE TOWERS — A type of mount that is self-supporting with multiple legs and crossbracing of structural steel.

MODIFICATION OF AN EXISTING FACILITY — Any material change or proposed change to a facility, including but not limited to power input or output, number of antennas, change in antenna type or model, repositioning of antenna(s), or change in number of channels per antenna above the maximum number approved under an existing permit or special permit.

MONITORING — The measurement, by the use of instruments away from the antenna, of the electromagnetic radiation from a site as a whole, or from individual wireless communications facilities, towers, antennas, repeaters or associated power supplies and generators.

MONOPOLE — A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal, or a wooden pole with below grade foundations.

NEPA — National Environmental Policy Act.

PERSONAL WIRELESS SERVICE FACILITY — Facility for the provision of personal services, as defined by the Telecommunications Act.

PRE-EXISTING TOWERS AND ANTENNAS — Any tower or antenna, which was lawfully erected before the effective date of this section.

RADIO-FREQUENCY RADIATION (RFR) — The electromagnetic emissions from wireless service facilities.

REPEATER — A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage from the primary sending and receiving site in a wireless communications network.

RFI — Radio frequency interference.

RFR — Radio frequency radiation.

SCENIC VIEW — A wide-angle or panoramic field of sight and may include natural and/or man-made structures and activities which may be seen from a stationary viewpoint or as one travels along a roadway, waterway, or path, and may be to an object in the distance, such as a mountain, or an object nearby, such as an historic building or a pond.

SELF-SUPPORTING TOWER — A communications tower that is constructed without guy wires.

SPECIAL PERMIT — A permit under this section and § 205-50 of this chapter as granted by the Zoning Board of Appeals (ZBA).

SPECTRUM — Relating to any transmissions or reception of electromagnetic waves.

STEALTH TOWER — A camouflaged tower.

STRUCTURALLY ABLE — The determination that a tower or structure is capable of carrying the load imposed by the proposed new antenna(s) under all reasonable predictable conditions as determined by professional structural engineering analysis.

TOWER — A structure or framework, or monopole, that is designed to support wireless communications transmitting, receiving, and/or relaying, antennas and/or equipment. Components of the wireless communications facility used only to attach or support other elements of that facility are excluded, provided such components are relatively less substantial than those other elements and do not materially affect a dimension of that facility.

TOWER HEIGHT — The vertical distance measured from the base of the tower support structure to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the tower height.

TOWN — Westminster, Massachusetts, and/or its elected or appointed officials.

WCFOF — Wireless Communications Facilities Overlay District.

WIRELESS COMMUNICATIONS FACILITIES OVERLAY DISTRICT — All parcels of land shown on the map entitled: "Wireless Communications Facilities Overlay District Map," dated October 2004.¹³ [Amended STM 10-26-2004 by Art. 22]

WIRELESS COMMUNICATIONS FACILITY — All equipment, buildings, and structures with which a wireless communications service carrier broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment or any part thereof.

WIRELESS COMMUNICATIONS SERVICE PROVIDER — An entity licensed by the Federal Communications Commission (FCC) to provide wireless communication services to individuals, businesses or institutions.

WIRELESS COMMUNICATIONS SERVICES — Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as defined in the Act.

ZBA — Zoning Board of Appeals.

C. Location of facilities.

(1) Criteria; priority for location of facilities.

(a) Wireless communications facilities shall be located according to the following priorities:

- [1] Within an existing structure and camouflaged.**
- [2] Camouflaged on an existing structure, such as but not limited to an existing electric transmission tower or an existing radio antenna, a water tower, or building, and of a compatible design.**
- [3] Collocated with existing wireless communications service facilities.**
- [4] If adequately demonstrated to the ZBA in the special permit process that each of the four types of locations is not feasible, erection of a new facility which complies with the other requirements of this section and where visual impact can be minimized and mitigated.**

(b) Applicants shall demonstrate that they have investigated locations higher

¹³. Editor's Note: Said map is on file in the Town offices.

in priority ranking than the one for which they are applying and whether sites are available and, if applicable, under what conditions.

- (2) Locations where facilities are permitted by special permit. A wireless communications facility may be installed in the Wireless Communications Facilities Overlay District, all commercial districts, and all industrial districts by a special permit from the ZBA in accordance with this section.
- (3) Locations with nonconforming situations. The ZBA may grant a special permit to modify, reconstruct, or replace a pre-existing tower or facility if it decreases the degree of nonconformity with this section.

D. Dimensional, screening and other site development requirements.

- (1) Shelters and accessory buildings. Any communications equipment shelter or accessory building shall be designed to be architecturally similar and compatible with the surrounding area. Whenever feasible, a building shall be constructed underground.
- (2) Setbacks. Any new tower shall be set back at least 1 1/2 times the height of the tower plus 10 feet from each lot line of the site on which the tower is located. Any nonconcealed antenna shall be set back at least 1 1/2 times the height of the antenna, as measured from the ground level, from each lot line of the site on which the antenna is located. However, if the antenna is being attached to an existing tower whose setback complies with this section, and if the ZBA determines that the addition of the antenna does not materially alter the basis of that prior approval, then no new, independent, setback requirement shall be created by the addition of the antenna. In commercial and industrial districts, or on publicly owned land, the ZBA may grant a special permit to allow a lesser setback if it makes a finding that such lesser setback provides adequate safety, promotes collocation or improves design, and will not negatively impact the appearance and character of the neighborhood.
- (3) Security; signs. The area around the wireless communications facility shall be completely secure from trespass or vandalism. A sign not larger than one square foot shall be posted adjacent to the entry gate indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number. Advertising or symbols of any kind on any antenna, tower, fencing, accessory building or communications equipment shelter is prohibited. The tower ladder shall be designed and maintained to prevent unauthorized climbers.
- (4) Lighting. Unless required by the Federal Aviation Administration, no exterior night lighting of towers or the wireless communications facility is permitted except for manually operated emergency lights for use when operating personnel are on-site.
- (5) Other requirements.
 - (a) Emergency power. Emergency power shall emit no more than 35 decibels over ambient noise level at all property lines.

- (b) Noise. Noise at the site perimeter from the operation of any machinery or equipment shall be minimized to no more than 35 dB.
- (c) Design. Towers shall be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's and additional antennas when overall permitted height allows.
- (d) Distance requirements:
 - [1] Distance between towers. Wireless communications facilities shall be a minimum distance of 2 1/2 miles from each other, unless it is determined by a qualified engineer licensed to practice in the Commonwealth of Massachusetts that a closer proximity is needed for "adequate coverage" as defined in this section. Under no circumstances shall any wireless communications facility be within a distance of one mile to another, unless such tower is a stealth tower and the applicant's technology cannot be used on an existing tower as determined by a qualified engineer licensed in the Commonwealth of Massachusetts. The Town may select a consultant, at the applicant's expense, to assist in evaluating the applicant's requests in this regard.
 - [2] Distance for repeaters:
 - [a] No repeater shall be located closer than 50 feet to an existing residential dwelling unit.
 - [b] No repeater shall be located less than 25 feet, nor more than 70 feet above ground.
 - [3] No wireless communication facility, with the exception of repeaters, shall be located:
 - [a] Within any of the following prohibited areas:
 - [i] Massachusetts or federally regulated wetlands.
 - [ii] A Massachusetts certified vernal pool.
 - [b] Within 100 feet horizontally of any Massachusetts regulated wetland.
 - [c] Within 200 feet horizontally of the Outer Riparian Zone measured horizontally from any river or perennial stream.
 - [d] Within 300 feet of any existing permanently occupied residential dwelling (except camouflaged facilities).
 - [e] Within a distance equal to the overall height of the stealth or

camouflaged facilities to any property line, unless incorporated within an existing building, tower or steeple.

(6) Dimensional requirements. All wireless communications facilities shall comply with the following requirements:

- (a) Height, general. Regardless of the type of mount, wireless communications facilities shall be no higher than 15 feet above the average height of buildings within 300 feet of the proposed facility. In addition, the height of a wireless communications facility shall not exceed by more than 15 feet the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged, such as within a flagpole, steeple, chimney, or similar structure.
- (b) Height, ground-mounted facilities. Ground-mounted wireless communications facilities shall not project higher than 15 feet above the average building height or, if there are no buildings within 300 feet, these facilities shall not project higher than 15 feet above the average tree canopy height, measured from ground level (AGL). If there are no buildings within 300 feet of the proposed site of the facility, all ground-mounted wireless communications facilities shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may be existing on the subject property or planted on site.
- (c) Height, side and roof-mounted facilities. Side and roof-mounted wireless communications facilities shall not project higher than the height of the building, or more than 15 feet above the height limit of the zoning district within which the facility is located, whichever is higher. Wireless communications facilities may locate on a building that is legally nonconforming with respect to height, provided that the facilities do not project above the building height, or the height limit of the zoning district within which the building is located, whichever is higher.
- (d) Height, existing structures. New antennas located on any of the following structures existing on the effective date of this section shall be exempt from the height restrictions of this section, provided that there is no increase in the height of the existing structure as a result of the installation of a wireless communications facility: water towers, guyed towers, lattice towers, fire towers and monopoles.
- (e) Height, existing structures (utility). New antennas located on any of the following existing structures shall be exempt from the height restrictions of this chapter, provided that there is no more than a twenty-foot increase in the height of the existing structure as a result of the installation of a new antenna: electric transmission and distribution towers, telephone poles and similar existing utility structures. This exemption shall not apply in Historic Districts, within 150 feet of the right-of-way of any scenic roadway, or in designated scenic viewsheds.

- (f) Height, wireless communications facilities overlay district. Wireless communications facilities up to 150 feet in height may be permitted by special permit in the Wireless Communications Facilities Overlay District. Monopoles or camouflaged towers are the only type of mount allowed for such taller structures. Such structures shall comply with all setback and other requirements of this section.

E. Justification of need.

- (1) Coverage area. The applicant shall provide a map of the geographic area in which the proposed facility will provide adequate coverage.
- (2) Adequacy of other facility sites controlled by the applicant. The applicant shall provide written documentation of any facility sites in the Town and in abutting towns or cities in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.
- (3) Capacity of existing facility sites. The applicant shall provide written documentation that it has examined all facility sites located in the Town and in abutting towns in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.
- (4) Adequate coverage through the least disruptive means. The applicant shall provide written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as may be developed subsequent to adoption of this section) in which it can provide adequate coverage in conjunction with all facility sites listed above.

F. Application.

- (1) Applicant. Application shall be made to the Zoning Board of Appeals in the same manner as applications for any other special permit. The applicant or co-applicant for any permit for a wireless communications facility must be the wireless communications services provider for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit. No permits shall be granted for a tower or facility to be built on speculation.
 - (a) Applicants for wireless communications towers or facilities shall include the following supplemental information in their filings for special permit approval:
 - [1] Location map. The location of the proposed structure on the most recent United States Geological Survey Quadrangle map, showing the area within at least a three-mile radius of the proposed tower site.

- [2] A map or sketch of the property proposed to be developed, professionally drawn to scale and with the area to be developed clearly indicated.
- [3] A report from qualified and licensed professional engineers that:
 - [a] Describes the facility height, design, and elevation.
 - [b] Documents the height above grade for all proposed mounting positions for antennas to be collocated on a wireless communications tower or facility and the minimum separation distances between antennas.
 - [c] Describes the tower's proposed capacity, including the number, height, and types(s) of antennas that the applicant expects the tower to accommodate.
 - [d] Documents steps the applicant will take to avoid interference with any established public safety wireless communications, and includes both an intermodulation study that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies. Towers utilized by Westminster public safety channels will not locate conflicting frequencies on the same tower.
 - [e] Describes existing and proposed coverage. In the case of new tower proposals, the applicant shall demonstrate that existing wireless communications facility sites and other existing structures within Westminster, in abutting towns, and within a ten-mile radius of the proposed site cannot reasonably be modified to provide adequate coverage and/or adequate capacity to the Town of Westminster.
 - [f] Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage, and provides a detailed computer generated actual received level propagation model that describes coverage of the existing and proposed facilities.
 - [g] Describes the output frequency, number of channels and power output per channel for each proposed antenna.
 - [h] Includes a written five-year plan for use of the proposed wireless communications facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town of Westminster.
 - [i] Demonstrates the tower's compliance with the municipality's setbacks for towers and support structures.

- [j] Provides proof that at the proposed site the applicants will be in compliance with all FCC regulations, standards, and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards, and requirements regarding both radio frequency interference (RFI) and radio frequency radiation (RFR). The Town of Westminster may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards, and requirements on an annual basis at unannounced times. The Town may allocate to the applicant any reasonable expenses incurred or authorized by it in retaining independent engineers to perform these evaluations.
- [4] Commitment to share space. A letter of intent committing the tower owner and his or her successors to permit shared use of the tower if the additional user agrees to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provisions of this section.
- [5] Existing structures. For wireless services to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure must be submitted.
- [6] Environmental assessment. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete environmental assessment (EA) draft of the final report describing the probable impacts of the proposed facility shall be submitted to the Building Inspector prior to the issuance of a building permit.
- [7] Vicinity map. A topography priority resource map showing the entire vicinity within a one-thousand-foot radius of the tower site, including the wireless communications facility or tower, public and private roads and buildings and structures, water bodies, wetlands, landscape features and historic sites. The map shall show the property lines of the proposed tower site parcel and all easements or rights-of-way needed for access from a public way to the tower.
- [8] Proposed site plans of the entire wireless communications facility, professionally drawn to scale, showing all improvements, including landscaping, utility lines, screening and roads.
- [9] Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.
- [10] Where the proposed site is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.

[11] Construction sequence and estimated time schedule for completion of each phase of the entire project.

[12] Any additional information requested by the Westminster ZBA.

- (b) Plans shall be drawn at a minimum at the scale of one inch equals 50 feet. The permit application shall be signed under the penalties of perjury.
- (2) Review by the Design Advisory Committee.
 - (a) The Town of Westminster's Design Advisory Committee shall review an applicant's site plans and make recommendations to the ZBA for special permits within 35 days of filing with the Town Clerk. The Design Advisory Committee will make comment on whether the site plans show that a proposed wireless communications facility will be appropriate for the site if built according to the plans.
 - (b) The DAC may require a consultant to review the application and proposed site at the applicant's expense.
- (3) Approval criteria. A special permit shall be granted under this section only if the ZBA shall find that the project is in harmony with the general purpose and intent of this article and chapter. In addition, the ZBA shall make all applicable findings before granting the special permit, including but not limited to the following:
 - (a) That the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit;
 - (b) That the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage;
 - (c) That the proposed wireless service facility minimizes any adverse impact on historic resources, scenic views, residential property values, natural or man-made resources;
 - (d) That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities;
 - (e) That the facility shall comply with the appropriate FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant; and
 - (f) That the applicant has agreed to rent or lease available space on any tower it controls within Westminster or the contiguous towns, under the terms of a fair-market lease, without discrimination to other wireless service providers;
 - (g) That collocation is not possible due to structural or space limitations on existing or approved facilities, interference materially impacting existing

or approved facilities, aesthetic considerations, coverage area considerations, or a violation of any federal standard or requirement.

- (4) Conditions. The ZBA may impose such conditions and safeguards as it deems are in the interest of public health, safety, welfare and convenience, and in all cases shall impose the following conditions:

- (a) By January 15 of each year, the wireless communications service provider shall provide to the Board of Selectmen, in care of the Town Coordinator, the name of the operator, the names of any tenants on the property where the facility is located, FCC registrations for all wireless communications service providers on the property, the frequencies being used, the power levels, insurance certificates, evidence that a performance bond remains in place and emergency telephone numbers.
- (b) By January 15 of each year, the wireless communications service provider shall file with the Board of Selectmen, in care of the Town Coordinator, a certification of structural integrity from a qualified structural engineer, evidence of continuing compliance with the American National Standards Institute and National Council for Radiation protection, FAA and FCC, including compliance with updates and modifications.

- (5) Term of permit.

- (a) A special permit shall be valid for a fixed or conditional period of time as determined by the Zoning Board of Appeals. A special permit for any wireless communications facility that exceeds the height provisions of the zoning district or underlying zoning district, as the case may be, shall be valid for a maximum of 15 years. At the end of the approved time period, the facility shall be removed by the carrier, or a new special permit shall be required.
- (b) All wireless communications service providers shall file annually by January 15, with the Board of Selectmen, in care of the Town Coordinator, a statement regarding the operational aspects of the facility, including, but not limited to the amount of power consumption; power radiation; frequency transmission; the number, location, and orientation of antennas; and types of services provided.

G. Removal of abandoned antennas and towers.

- (1) A wireless communications service provider shall annually, by January 15, file a declaration with the Westminster Board of Selectmen, in care of the Town Coordinator, certifying the continuing safe operation of any facility installed subject to these regulations. Failure to file a declaration shall be deemed an abandonment of such facility.
- (2) A wireless communications facility shall also be considered abandoned when it has not been used for the purpose for which it was permitted for a period of

12 months.

- (3) The wireless communications service provider shall obtain and maintain a performance bond in an amount no less than \$100,000, or such greater sum as the ZBA may determine, for the removal of each wireless communications facility constructed in the Town of Westminster and for the restoration of the site, in a form approved by the Treasurer and the Town Counsel.
- (4) The wireless communications service provider shall obtain and maintain \$3,000,000 in personal injury and property damage liability insurance. The Town of Westminster shall be named an additional insured and the certificate holder shall be the Town Coordinator.
 - (a) The wireless communications service provider shall have 90 days to remove a tower following the expiration of the special permit, or from the date it is deemed abandoned as set forth herein.
 - (b) If such a facility is not so removed, the Town may exercise its rights under the performance bond without further notice.

ARTICLE X

Signs

§ 205-40. Compliance required.

No signs or advertising devices of any kind or nature shall be erected on any premises or affixed to the outside of any structure or be visible from the outside of any structure in Westminster, except as specifically permitted in this section.

§ 205-41. Residential districts.

A. The following signs shall be permitted:

- (1) One sign, except for mailbox identification, the letters of which shall not exceed four inches in height and shall identify only the box holder, displaying the street number, or name of the occupant of premises, or both, not exceeding two square feet in area. Such sign may be attached to a building or may be on a rod or post not more than six feet high and not less than 10 feet from the street line. Such sign may include identification of an accessory studio or professional office in the dwelling or on the premises, or may identify other permitted accessory uses, including customary home occupations.
- (2) One bulletin or announcement board or identification sign for a permitted nonresidential building or use, with not more than six square feet of signboard area. For churches and institutions, two bulletin or announcement boards or identification signs are permitted for each building. Each such church or institution sign shall have not more than 10 square feet of signboard area. No such signs shall be located nearer street than one-half (1/2) the required front yard depth.
- (3) On the premises with a lawfully nonconforming nonresidential use, one sign

with not more than six square feet of signboard area.

- (4) Two "for sale" or "for rent" or "for lease" signs with not more than six square feet of signboard area each and advertising only the premises on which the sign is located.
 - (5) Two building contractor's signs on a building while actually under construction not exceeding six square feet of signboard area each.
- B. In residential districts, all signs or advertising devices shall be stationary and shall not contain any visible moving or movable parts. No sign or advertising device in such districts shall be of neon or illuminated-tube type. Lighting of any sign or advertising device shall be continuous (not intermittent nor flashing nor changing) and shall be so placed or hooded as to prevent direct light from shining onto any street or adjacent property. No sign or advertising device shall be illuminated after 11:00 p.m.

§ 205-42. Commercial and industrial districts.

- A. In commercial and industrial districts, signs shall relate to the premises on which they are located and shall only identify the occupancy of such premises or advertise the articles or services available within said premises.
- B. In commercial and industrial districts, there shall be no temporary or permanent special promotion signs, banners, streamers or placards erected, suspended, posted or affixed in any manner outdoors or on the exterior of any building except for public or institutional purposes.
- C. On each lot in a commercial or industrial district, there is permitted one sign affixed to the exterior of a building, for each occupant. The top edge of each such sign shall be not higher than the roof ridge of the building, or the highest point of the roof, if no ridge pole, nor higher than the plate of a flat roof.
- D. Signs permitted in commercial and industrial districts shall not have more than 100 square feet of signboard area per sign, nor more than three-fourths (3/4) of the length of the face of the building on which the sign is affixed.
- E. In commercial and industrial districts where buildings are set back 40 feet or more, one freestanding sign per lot is permitted. The top edge of any such freestanding sign shall be not higher than 25 feet vertical measured above the average level of the ground between the supports of each sign. For traffic safety, the whole of the signboard or display elements of any freestanding sign shall be either below three feet in height or above 10 feet in height above average ground level. Any such freestanding sign may be located within the front yard space, if any are on such lot, but not nearer than 12 feet to any lot line.
- F. No freestanding sign shall have a signboard area (or display area, if no signboard) exceeding 100 square feet gross area, measured from the tops of the topmost display elements and from exterior side to exterior side of display elements, and including in such measurements any blank space between display elements. No

display or signboard dimension shall exceed 16 feet for a freestanding sign.

- G. Illuminated signs are permitted, subject to the following conditions:
 - (1) No sign shall be intermittently illuminated nor be of a traveling-light, animated or flashing-light type.
 - (2) Each steadily illuminated sign shall not exceed 100 square feet gross display area as measured in Subsection E above.
- H. Sign illumination is permitted only between the hours of 7:00 a.m. in the morning and 11:00 p.m. in the evening, except that signs of commercial or industrial establishments may be illuminated during any hours these establishments are open to the public or in operation.
- I. In any commercial or industrial district, for any building in excess of 40,000 square feet of gross floor area, the requirements of Subsections C, D and E may be increased by 10 square feet for each 10,000 square feet of gross floor area in excess of 40,000 square feet gross floor area.

§ 205-43. Illuminated signs.

In all zoning districts, for safety reasons, any private outdoor lighting fixture, whether temporary or permanent, other than gaseous tube letters in signs, shall be so placed or hooded so that no light beams shall be directed at any point beyond the lot lines of the premises illuminated.

§ 205-44. Nonconforming signs.

All nonconforming signs shall conform to the requirements of § 205-42G(1) of this chapter within one year of the date of adoption of this chapter, for safety reasons. All signs shall conform to all other regulations of this Article X within seven years of the date of adoption of this chapter, except that signs in residential districts on legally nonconforming uses shall be required to conform to Article X this chapter as if they were located in a district in which the use was permitted as a matter of right.

§ 205-45. Real estate signs and building contractors signs in commercial and industrial zones and on acreage over five acres.

- A. For commercial, industrial or acreage over five acres in any zone, two "for sale," "for rent" or "for lease" signs, with not more than 32 square feet signboard area and advertising only the premises on which the sign located shall be permitted.
- B. For commercial, industrial or acreage over five acres two building contractor's signs not more than 32 square feet each signboard area, while actually under construction, shall be permitted.

ARTICLE XI
Floodplain and/or Wetland Protection Districts

§ 205-46. Use regulations.

Any land falling in a Floodplain District shall be subject to the following:

- A. No building or structure shall be erected in a Floodplain District. No land shall be used for any purpose, except as permitted in the Table of Use Regulations, Subsection G, of this chapter.¹⁴
- B. Any land included in a Floodplain and/or Wetland Protection District which is proven to the satisfaction of the Board of Appeals, after consultation with the Conservation Commission, as being in fact not subject to flooding or not unsuitable because of drainage conditions for any use which would otherwise be permitted if such land were not, by operation of this section in the Floodplain and/or Wetland District, and that the use of such land for any such use will not interfere with the general purposes for which Floodplain and/or Wetland Districts have been established, and will not be detrimental to the public health, safety or welfare, the Board of Appeals may, after a public hearing with due notice and after the question has been referred to and reported on by the Board of Health, issue a special permit for any permitted use which meets the requirements and restrictions applicable to such land. [Amended STM 10-2-1978 by Art. 7]
- C. No land fill or dumping shall be permitted in any part of the Floodplain District, except such as may be expressly included as part of any special permit issued under the provisions above.

ARTICLE XII Appeals and Board of Appeals

§ 205-47. Variances. [Added STM 10-2-1978 by Art. 9]

The Board of Appeals shall have the power, after public hearing and notice as required by MGL C. 40A, to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this chapter, expressly including variances for use or activity not otherwise permitted in the district in which the land or structure is located, upon a specific finding that, owing to circumstances related to soil conditions shapes or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.

§ 205-48. Board of Appeals; membership; powers. [Amended STM 10-2-1978 by Art. 1; STM 3-15-1989 by Art. 7]

As provided by the Massachusetts General Laws, there shall be in Westminster a Board of Appeals. Such Board of Appeals shall consist of three members and four associate members, all of whom shall be appointed by the Selectmen in a manner specified in the

¹⁴. Editor's Note: The Table of Use Regulations is included at the end of this chapter.

Massachusetts General Laws. Such Board members shall have and exercise the powers applicable under said Massachusetts General Laws. The Board of Appeals shall act as the permit granting authority and as special permit granting authority designated by MGL C. 40A.

§ 205-49. Appeals. [Amended STM 10-2-1978 by Art. 1]

An appeal to the Board of Appeals may be taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL C. 40A, by the regional Planning Agency, by any persons, including an officer or board of the Town, or of an abutting city or Town aggrieved by an order or decision of the Building Inspector or other administrative official in violation of any provision of MGL C. 40A or this chapter.

§ 205-50. Special permits. [Added STM 10-2-1978 by Art. 1]

- A. Except as otherwise provided for in Article IX, special permits, as provided for in Article VI, shall only be issued or denied by the Board of Appeals following a public hearing held within 65 days after filing of an application for a special permit with the Town Clerk and upon a finding by the Board that the use request is appropriate on the site in question and that the use will not be unduly detrimental to the health, safety, morals or welfare of the community or neighborhood by reason of noise, traffic, pollution or demand on community facilities or utilities. The Board, in issuing any special permits, shall stipulate any conditions it deems necessary to ensure that the use will not become unduly detrimental to the Town or area in which it is located.
- B. A special permit granted by the Board shall lapse within two years, including such time required to pursue an appeal if one is taken, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date, except for good cause.

§ 205-51. Lapse of variance. [Added STM 10-2-1978 by Art. 1]

If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance, they shall lapse.

ARTICLE XIII
Amendments

§ 205-52. Amendment procedure. [Amended STM 10-2-1978 by Art. 1]

- A. This zoning chapter may be amended by one of the following submitting the proposed amendment to the Board of Selectmen:
 - (1) The Board of Selectmen.
 - (2) The Zoning Board of Appeals.

- (3) An individual owning land to be affected by the amendment.
 - (4) Request of registered voters of a Town pursuant of MGL C. 39, § 10.
 - (5) The Planning Board.
 - (6) The Regional Planning Agency.
- B. The Board of Selectmen shall, within 14 days of receipt of a proposed amendment, submit it to the Planning Board for review, public hearing, and report with recommendations, pursuant to MGL C. 40A, § 5.

§ 205-53. Change in boundary descriptions.

If geographic change of a zoning boundary description is proposed, words of boundary description change for insertion in the warrant shall be accompanied by a brief written statement of the nature, extent and location in the Town of the Zoning Map change proposed together with three blackline prints of a diagram to scale showing the area to be changed, stating pertinent dimensions in feet.

§ 205-54. Costs for hearing and notices. [Amended STM 10-2-1978, Art. 1]

The costs of publication and of mailing of notices of public hearing and the costs of holding such zoning hearing and of making public record of the proceedings at such public hearing, if such a record be made, shall be paid by the Planning Board, but the Planning Board may determine whether a fee to cover such costs shall be required of zoning amendment proponents.

ARTICLE XIV
Enforcement; Violations and Penalties

§ 205-55. Zoning permit required. [Amended STM 10-2-1978 by Art. 1]

No building shall be erected, altered or moved in the Town without a written permit issued by the Building Inspector. Permits shall be applied for in writing. The Building Inspector shall not issue any such permit unless the plans for the building and the intended use thereof in all respects fulfills the provisions of this chapter, except as may have been specifically permitted otherwise by action of the Board of Appeals, provided that a written copy of the terms governing any such permission be attached to the application and to the resulting building permit issued. One copy of each such permit, as issued, including any conditions or exceptions attached thereto, shall be kept on file in the office of the Building Inspector. This provision shall not apply to alterations of less than \$2,000.

§ 205-56. Plot plans.

Each application for a permit to build, alter or move a building shall be accompanied by a plot plan in such number of copies and drawn to such scale as is required by the Building bylaws of the Town. Each such plot plan shall show dimensions and areas of lots and of structures to be erected, altered or moved and adjacent streets or angles of all lot lines

shown thereon, and also of any streets or ways. Such plot plans shall also indicate approved street grades and proposed elevations of the tops of foundations, the locations of existing sanitary sewers, storm drains and water pipes in any street shown and the locations of all existing buildings and structures within the application area, provided that the cost of said construction exceeds \$500.

§ 205-57. Enforcement officer; notice. [Amended STM 10-2-1978 by Art. 1; ATM 5-3-2005 by Art. 47]

This chapter shall be enforced by the Building Inspector or other person designated by the Board of Selectmen. The Building Inspector, upon being informed, in writing, of a possible violation of this chapter or on his own initiative shall make or cause to be made an investigation. After investigation and inspection, he shall give written notice of such premises. The Building Inspector shall demand in such notice that such violation is abated within a reasonable time, designated therein by the Building Inspector. Such notice and demand may be given by mail addressed to the owner at the address appearing for him on the most recent real estate tax records of the Town and to the occupant at the address of the premises of such seeming violation. A copy of said notice shall be filed with the Board of Selectmen. The Building Inspector shall also comply with the notice requirements in MGL C. 40A, § 7.

§ 205-58. Failure to abate. [Amended STM 10-2-1978 by Art. 1]

If, after such notice and demand, such violation has not been abated within the time specified, the Building Inspector shall institute appropriate action or proceedings in the name of the Town to prevent, correct, restrain or abate any violation of this chapter. Penalties as specified in § 205-58 shall begin immediately upon expiration of the time specified for abatement by the Building Inspector if such abatement has not taken place.

§ 205-59. Violations and penalties. [Amended STM 10-2-1978 by Art. 8; ATM 5-3-1997 by Art. 34]

Any violation of any provision of this chapter or of any regulation by the Town Health Officer pursuant to this chapter shall be punished by a fine of not more than \$300. Each violation and each day of violation shall constitute a separate offense, punishable by fine as aforesaid.